

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TREVA GRAHAM)	
Claimant)	
VS.)	
)	
PROGRESSIVE HOME HEALTH CARE)	Docket No. 228,114
Respondent)	
AND)	
)	
TIG PREMIER INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appealed Administrative Law Judge Jon L. Frobish's June 25, 1999, Award. The Appeals Board heard oral argument by telephone conference on November 3, 1999.

APPEARANCES

Claimant appeared by her attorney, Dale V. Slape of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Kirby A. Vernon of Wichita, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and has adopted the stipulations listed in the Award.

ISSUES

Claimant sustained a cervical and lower back strain in a September 12, 1997, work-related automobile accident. The Administrative Law Judge found claimant was returned to work without restrictions and then was terminated by respondent for reasons not related to her work-related injuries. The Administrative Law Judge awarded claimant a 3 percent permanent partial general disability based on her functional impairment.

On appeal, claimant contends respondent never offered her a job after her work-related accident. Furthermore, claimant argues, although she made a good faith effort to find appropriate employment, she has not been successful. Accordingly, claimant contends

she is entitled to 65 percent work disability based on a 29 percent work task loss and 100 percent wage loss.¹

In contrast, respondent contends the Administrative Law Judge's 3 percent permanent partial general disability award should be affirmed. Respondent argues that claimant was returned to work after the work-related automobile accident without restrictions. Claimant was then terminated by respondent for dishonesty and poor work performance unrelated to her work-related injuries. Additionally, respondent argues any work restrictions that were imposed on claimant are for the December 4, 1997, nonwork-related automobile accident and not for injuries claimant sustained as a result of the September 12, 1997, work-related automobile accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After the reviewing the record, considering the briefs, and hearing the arguments of the parties, the Appeals Board finds the Administrative Law Judge's Award should be affirmed.

The findings of fact and conclusions of law set forth in the Administrative Law Judge's Award are found to be accurate and supported by the record. It is not necessary to repeat those findings and conclusions in this Order. Therefore, the Appeals Board adopts the Administrative Law Judge's findings and conclusions as its own.

Claimant's treating physician, Gregory Ricke, M.D., did not testify in this case. But his medical treatment records were stipulated into the record by the parties. Dr. Ricke's medical records were the only medical evidence entered into the record from a physician that treated claimant for both her September 12, 1997, work-related automobile accident and her December 4, 1997, nonwork-related automobile accident.

Dr. Ricke first saw claimant on September 19, 1997, and then released claimant to return to work without restrictions on November 12, 1997. Thereafter, Dr. Ricke saw claimant again on December 1, 1997, and noted that claimant had been in another automobile accident on December 4, 1997. At that time, Dr. Ricke placed restrictions on claimant's work activities. Because the December 4, 1997, automobile accident was noted in Dr. Ricke's December 1, 1997, medical record, the Appeals Board concludes that Dr. Ricke was informed by the claimant about her December 4, 1997, accident before he dictated his December 1, 1997, medical note. But since Dr. Ricke did not testify we do not have the benefit of his explanation. Because the doctor had previously released claimant to return to work without restrictions on November 12, 1997, the Appeals Board interprets Dr. Ricke's restrictions set out in his December 1, 1997, medical note as resulting from the December 4, 1997, automobile accident.

Although claimant was released to return to work on November 12, 1997, without restrictions, respondent did not return her to work. Respondent terminated claimant's

¹ See K.S.A. 1997 Supp. 44-510e(a).

employment for dishonesty and poor performance. Accordingly, if not for the termination, claimant retained the ability to perform her regular job duties at a comparable wage. Therefore, the Appeals Board concludes claimant is limited to permanent partial general disability benefits based on her functional impairment rating.²

The Administrative Law Judge found claimant's permanent partial disability should be based on Dr. Ricke's 3 percent permanent functional impairment rating. The Appeals Board agrees that Dr. Ricke's functional impairment rating is the most credible and persuasive rating contained in the record. Therefore, the Appeals Board adopts this finding. Dr. Ricke's medical records were the only medical evidence entered into the record from a physician who treated claimant for both the September 12, 1997, accident and the December 4, 1997, accident.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Jon L. Frobish's June 25, 1999, Award should be, and is hereby, affirmed.

All authorized medical expenses are ordered paid by the respondent.

All remaining orders contained in the Award are adopted by the Appeals Board.

IT IS SO ORDERED.

Dated this ____ day of November 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Dale V. Slape, Wichita, KS
Kirby A. Vernon, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director

² See Ramirez v. Excel Corporation, 26 Kan. App. 2d 139, 979 P.2d 1261, *rev. denied* ____ Kan. ____ (1999).